



ఆంధ్రప్రదేశ్ రాజ పత్రము
THE ANDHRA PRADESH GAZETTE
PUBLISHED BY AUTHORITY

W.No.47

AMARAVATI, FRIDAY, NOVEMBER 25, 2022

G.1863

PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

--X--

NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

ADDITIONAL SENIOR CIVIL JUDGE'S COURT

TENALI

Tuesday, this the 18th day of October, 2022

Insolvency Petition No. 8 of 2019

Between:

Khambham Naga @ Nageswara Rao S/o.Bahamian, aged about 35 years, Hindu,
R/o.Purushotham vari Street, Nazarpet, Tenali, Tenali JCJC.

...Petitioner

And

1. Chilla Chandra Sekhar S/o.Koteswara Rao, aged about 40 years, Hindu, Business, R/o.D.No. 1-29-10, Lakshmi Narasimha Street, Nazarpet, Tenali, Guntur District.
2. Shaik Dada Vali S/o.Imam Vali aged about 65 years, Muslim, Business and R/o.D.No.6-3-63, Sagara Road, Cambuam village and Mandal, Prakasam District, Markapur JCJC.
3. Kodndi Venkateswara Rao S/o.Sivaiah, aged about 38 years, Hindu, Business, and R/o.D.No. 1-9-11, Abbarajuvari Street, Nazarpet, Tenali, Guntur District, Tenali JCJC.
4. Redrouthu Naga Lakshmi W/o.Sivaiah, aged about 37 years, Hindu, House wife and R/o.D.No. 1-6-35, Nakkavari Street, Nazarpet, Tenali, Guntur District, Tenali JCJC.
5. Mogali Madhavi W/o.Mogili Srinivasa Rao, aged about 45 years, Hindu, House wife, R/o.Sankavarikotla Bazar, Nazarpet, Tenali, Guntur District, Tenali JCJC.

6. Khambham Venkateswarlu S/o.Nageswara Rao, aged about 42 years, Hindu, Business, R/o.D.No.6-41/18, Purushothamvari street, Nazarpet, Tenali, Guntur District, Tenali JCJC.
7. Shaik Srinu Basha S/o.Khadra aged about 55 years, Muslim, Business and R/o.D.No.5-68, Khambamroad, Near Narasimhaswami Temple, Markapuram, Prakasam District, Markapuram JCJC.
8. Syed Rahaman Sharik S/o.Khadra aged about 50 years, Muslim, business, R/o.D.No.9-81/2, Opp.Busstand, Markapuram, Prakasam District, Markapuram JCJC.
9. Raethu Bramhaji S/o.Narasimha Rao, aged about 60 years, Hindu, Properties and R/o.D.No.6-18/2, Ongole Road, Markapuram, Prakasam District, Markapuram JCJC.

...Respondents

This Insolvency Petition is coming on 01.09.2022 before me for hearing in the presence of Sri S.F.Basha, and Sri T.Prabhakara Rao, Advocates for Petitioner and of Sri M.P.Bhimeswar, Advocate for the Respondent No. 5 and respondent Nos.1 to 4, 6 to 9 remained exparte and upon hearing and considering the material on record, having stood over for consideration till this day, this Court made the following :

:: ORDER ::

1. Petitioner filed this insolvency petition under Section 10 of Provincial Insolvency Act, 1920 seeking to adjudicate and declare the petitioner as insolvent; to grant protection to the petitioner from being arrested on any of the proceedings taken by the respondents and for costs.

2. The brief averments of the petition is as follows:

The petitioner started taking agricultural land on lease and business in the year 2010 onwards and he sustained losses in agricultural and business and towards development of his business. The petitioner used to borrow money from the respondents and repaid some amounts to them. But subsequently due to ill-luck of the petitioner sustained losses in his agricultural and business and he was unable to discharge the debts due to the respondents and as such the petitioner is unable to do any work at present and unable to discharge the debts due to the respondents herein. In that process the 5th respondent herein filed a suit in O.S.34/2016 on the file of the Hon'ble Additional Senior Civil Judge, Tenali and obtained decree on 13.02.2017 and subsequently filed E.P.No.29/2017 on the file of the Hon'ble Court, Tenali for realization of E.P warrant amount and sought for arrest of the petitioner and the same was allowed on 21.02.2019 by the Hon'ble Additional Senior Civil Judge, Tenali and issued arrest warrant for arrest of the petitioner and posted the matter to 22.03.2019.

Now taking advantage of the petitioner financial weak position, the respondents are threatening the petitioner with dire consequences to discharge their debts and the petitioner is having threat to his life in the hands of the respondents and that under these circumstances, the respondents to whom the petitioner indebted the amounts shown in the

schedule annexed herewith came upon the house of the petitioner and demanding to pay and clear off their respective dues and for some days the petitioner managed them. But slowly the respondents one by one are becoming violent and threatening the petitioner to discharge the amounts due to them by adopting forcible methods and somehow the petitioner escaped from their clutches and all the above acts of the petitioner amounts to the acts of insolvency. The petitioner is not having any movable or immovable properties of his won except the item shown in the schedule. The petitioner is ready and willing to hand over the same to the official receiver, Guntur. Now the petitioner's family position became worse and he fears danger to his life in the hands of the respondents. The petitioner is practically an insolvent and he is depending on his friends and relatives for the maintenance of his family. The petitioner is not in a position to pay the liabilities of the respondents and his liabilities far exceed the assets. Hence, the petitioner is constrained to file the petition for declaring him as an insolvent. Hence, this petition.

3. Respondent No.5 filed counter denying all the allegations mentioned in the petition. Respondent No.5 further stated that the except her, none of the respondents has given any amounts to the petitioner as alleged in the petition and they are not real creditors and those names were concocted. 5th respondent filed suit in O.S.No.34/2016 and the petitioner contested the matter as defendant and finally Court passed a decree and judgment in favour of 5th respondent and the petitioner tried to escape from the liability and tried to avoid the orders of the Hon'ble Court. The petitioner with malicious intention and by suppressing all of his assets, filed this petition only to defraud his creditors.

The petitioner is having wonderful financial sources to repay the entire debt and trying to avoid the decretal amount to the 5th respondent. The petitioner is doing business and having capacity to pay the entire decretal amount to the respondent. The other respondents are not the original borrowers of the petitioner and the petitioner has filed this false petition for adjudging him as an insolvent and hence, the petition deserves to be dismissed with costs.

4. On behalf of the petitioner's side, petitioner himself examined as PW1 and no documents were marked. On behalf of the respondents, 5th respondent was examined as RW 1 and no documents were marked.

5. Heard both sides. Perused the material available on record.

6. Now the point for determination is:

Whether the petitioner can be adjudicated and to declare as an insolvent?

7. **POINT:**

- i) The counsel for the petitioner submitted that in the year 2010, the petitioner started to take agricultural lands on lease and business and used to do cultivation and that one or two years he was able to pay the maktha to the landlords and that the petitioner took more lands from the landlords for lease and he borrowed some

money from the respondents for cultivating the agricultural lands and business in that circumstances he sustained loss and again he borrowed some more money to clear earlier debts in higher rate of interest in this regard and subsequently he is also sustained heavy loss in his agricultural operations and business knowing that some of the respondents are pressured the petitioner and threatened him with dire consequences and harassed the petitioner and due to pressure of the respondents, the petitioner unable to clear the debts. The petitioner who is not in a position to earn anything and is not in a position to repay the debts due to the respondents. The liabilities of the petitioner are exceeded his assets and the petitioner is unable to discharge the debts, and the petitioner is unable to resist the illegal and high handed acts of the respondents, who are bent upon collecting amounts from the petitioner even by using coercion and hence, he filed this insolvency petition and prays to allow the petition.

- ii) Per contra, the counsel for the respondent No.5 submitted that the 5th respondent filed suit in Q.S.No.34/2016 and the petitioner contested the matter as defendant and finally Court passed a decree and judgment in favour of 5th respondent and the petitioner tried to escape from the liability and tried to avoid the orders of the Hon'ble Court. The petitioner with malicious intention and by suppressing all of his assets, filed this petition only to defraud his creditors. The counsel for 5th respondent further submitted that the petitioner is having wonderful financial sources to repay the entire debt and trying to avoid the decretal amount to the 5th respondent. The petitioner is doing business and having capacity to pay the entire decretal amount to the respondent. The other respondents are not the original borrowers of the petitioner and the petitioner has filed this false petition for adjudging him as an insolvent and prays to dismiss the petition.
- iii) In support of his case, the petitioner himself examined as PW1 who filed his affidavit in lieu of examination-in-chief, wherein he reiterated the contents of his petition and as such/the examination-in-chief of PW1 is true replica of the petition.
- iv) In support of his case, the 5th respondent herself examined as RW1 who filed her affidavit in lieu of examination-in-chief, wherein she reiterated the contents of her counter and as such, the examination-in-chief of RW1 is true replica of the counter.
- v) In this case, the contention of the respondents is that the petitioner is having capacity to repay the debt amounts to the respondents. Moreover, it is the contention of the respondents that the petitioner is doing business and having capacity to pay the entire decretal amount to the respondents. But the respondents failed to file any scrap of paper in proof of the said allegations that the petitioner is having capacity and earning money. The counsel for the respondents failed to establish that the PW1 is having financial capacity to repay his debts. Moreover, during the cross examination of RW1, the counsel for petitioner elicited that **"It is true that petitioner also used to construct buildings by taking contracts. It is true that petitioner also resided at Gokulakonda village, Nagulavaram**

Mandal, Guntur District and also taken landed properties on lease cultivated the same. I do not know whether due to contract work and agriculture, petitioner sustained loss. ...it is true that petitioner has taken amounts from me and so also from other respondents for his contract works and agricultural works....I am not filed any documentary proof to show that the petitioner is having properties on his name...I do not know whether petitioner is unable to maintain his family. ...” So, from the above evidence, it is clear that the petitioner has no sufficient means to pay the debts due to the respondents. Moreover respondent not filed any scrap of paper to show that . petitioner is having properties other than the schedules and the same also admitted by respondent No.5 himself. Keeping in view the said circumstances, this Court is of the opinion that the petitioner is entitled for declaring him as an insolvent.

8. In the result, the petition is allowed without costs, petitioner, is adjudicating and declaring as an insolvent. The time for discharge is six months. Since there are no movable or immovable properties, there is no need to appoint an official receiver. Office is directed to communicate a copy of this order to the District Collector, Guntur for publication in Official Gazette as per Section 30 of Provincial Insolvency Act, 1920.

(Typed to my dictation by the Personal Assistant, corrected and pronounced the operating portion of the order by me in open Court, this the 18th day of October, 2022.)

K. VANI,
Additional Senior Civil Judge,
Tenali.

Appendix of Evidence

Witnesses Examined

For Petitioner :

P.W.I: Khambham naga @ Nageswara Rao

For Respondents:

RW.1 : Mogili Madhavi

Exhibits Marked

For Petitioner:

Nil

For Respondents:

Nil

K. VANI,
Additional Senior Civil Judge,
Tenali.
[Dis.No.693]